

REMARKS

Claims 34 and 36-40 were pending in the application, prior to the present amendment. Claims 34 and 36-40 were rejected for obviousness-type double patenting and under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Each of the rejections is addressed below. First, Applicants note that, in the present amendment, claims 34 and 36-40 have been canceled and replaced with new claims 41-64, which are described below.

The Amendments

New claim 41 corresponds to prior claim 34, except that it specifies a genus encompassing the compound of prior claim 34, rather than just the compound of claim 34 itself. New dependent claims 42-59 provide more specificity to the genus of claim 41, leading to claim 58, which specifies the same compound as prior claim 34. New claims 60-64 correspond to prior claims 37-40, except in depending from new claim 41, cover the genus rather than the specific compound covered by claims 37-40. New claims 60-64 thus specify the presence in the claimed compositions of a pharmaceutically-acceptable carrier (claim 60), one or more other pharmaceutically-active agents (claims 61 and 62), and particular formulations (claims 63 and 64).

No new matter is added by these amendments, as the subject matter of the new claims is described in U.S. Serial No. 09/334,488 (now U.S. Patent No. 6,214,865), the contents of which were incorporated into this application by reference upon filing. The genus of new claim 41 and the new dependent claims (claims 42-59) are described in the '488 application as filed at, for

example, page 1, line 23 through page 3, line 1. This passage from the '488 application has been added to the present application by amendment, verbatim, as set forth above.

The pharmaceutically-acceptable carrier specified in new claim 60, the one or more pharmaceutically active agents of new claims 61 and 62, and the particular formulations of new claims 63 and 64 are supported, for example, at page 101, line 21 through page 102, line 2 of the '488 application. This passage from the '488 application has also been added to the present application by amendment, verbatim, as set forth above.

Applicants further note that the genus of new claim 41 corresponds to the genus of claim 1 as issued in U.S. Patent No. 6,214,865. Similarly, the newly added dependent claims correspond to dependent claims of the '865 patent. The claims of the present application pertain to compositions including compounds specified in the claims of the '865 patent.

Double Patenting Rejection

Claims 34 and 36-40 were rejected under the judicially-created Doctrine of Obviousness-Type Double Patenting over claim 19 of U.S. Patent No. 6,214,865 and claims 22-33 of U.S. Patent No. 6,653,341. In response to these rejections, Applicants submit herewith terminal disclaimers over the '865 and '341 patents. In view of these submissions, Applicants request that these rejections be withdrawn.

Rejection under 35 U.S.C. § 112, first paragraph

Claims 38-40 were rejected under 35 U.S.C. § 112, first paragraph as failing to comply

with the written description requirement. The Office Action states that these claims include new matter by specifying the particular pharmaceutically-active agents selected from immune stimulating agents and anti-MDR agents (claim 38) and the particular modes of administration (presumably the formulations specified claims 39 and 40). As is noted above, claims 38-40 have been canceled and replaced with corresponding claims 62-64.

Applicants respectfully submit that these claims do not include new matter because, as discussed above, the compounds and particular formulations specified in these claims are described in parent application U.S. Serial No. 09/334,488 (filed on June 16, 1999), which issued as U.S. Patent No. 6,214,865 on April 10, 2001 (see the passage quoted above). The contents of the '488 application were incorporated into this application by reference upon filing. Further, supporting passages from the '488 application for these claims have now been added to the present application by amendment. In view of this support for these claims, Applicants respectfully request that this rejection be withdrawn.

Initialed Form PTO 1449

Applicants note that the Form PTO 1449 that was submitted with an Information Disclosure Statement filed on October 16, 2003 has not been initialed and returned, and hereby request that it be initialed and returned with the next Office Action.

CONCLUSION

Applicants submit that the claims are in condition for allowance, and such action is respectfully requested. If there are any charges or any credits, please apply them to Deposit Account No. 03-2095.

Respectfully submitted,

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